

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)
)
 Implementation of)
 Section 403(l) of the)
 Telecommunications Act of 1996)
 (Silent Station Authorizations))

ORDER

Adopted: May 14, 1996

Released: May 17, 1996

By the Commission:

1. On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996 ("1996 Act").¹ Section 403(l) of the 1996 Act adds a new Section 312(g) to the Communications Act of 1934, under which a broadcast station's license will automatically expire upon the station's failure to broadcast for a consecutive 12-month period. With this Order, we conform our rules to this new provision.

Changes Resulting from the 1996 Act

2. Prior to the 1996 Act, the Commission's staff generally addressed the problem of "silent" broadcast stations in one of two ways. The staff would either (1) grant the station authority to remain off the air for a specified period of time if it found that such authority would serve the public interest; or (2) initiate a proceeding to revoke the station's license. Revocation proceedings for silent stations, like revocation proceedings for other reasons, were subject to lengthy procedural requirements including evidentiary hearings. See 47 U.S.C. § 312; 47 C.F.R. § 1.91.

3. The 1996 Act modifies those procedures in favor of a simpler regulatory scheme in cases of broadcasters who fail to broadcast for a prolonged time period. Under the new Section 312(g) of the Communications Act, added by the 1996 Act:

If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.²

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996).

² 1996 Act, § 403(l), codified at 47 U.S.C. § 312(g).

Pursuant to this language, the Commission no longer has the discretion or obligation to consider whether a licensed broadcast station should be permitted to remain silent for periods greater than 12 consecutive months. Nor is the Commission required to initiate revocation proceedings to terminate such licenses. Instead, broadcast licenses will expire as a matter of law at the end of the consecutive 12-month period of silence, without need for any Commission action. The changes to our rules are detailed in the accompanying Appendix. There is no change, however, in requirements that licensees notify us and obtain our consent for shorter periods of discontinued operation.³ Nor does the 1996 Act alter our authority to terminate licenses earlier under existing revocation and cancellation procedures. See, e.g., 47 C.F.R. §§ 1.91, 74.112(e), 74.763(c), and 74.1263(e).

Relevant Dates

4. For broadcast stations that go off the air on or after February 8, 1996, the date of the 1996 Act's enactment, it is clear that the stations' licenses would expire at the end of the consecutive 12-month period of silence. For example, if a station went off the air on February 8, 1996 and did not return to the air by February 8, 1997, the station's license would expire automatically at 12:01 a.m. on February 9, 1997.

5. With respect to stations off the air prior to February 8, 1996, the 1996 Act does not specify whether that period of silence should be included in the 12-month period that triggers license expiration. We note that any inclusion of pre-enactment silence in the 12-month period, while not necessarily retroactive, would raise many of the inequities associated with retroactivity.⁴ In the absence of explicit Congressional intent for the 1996 Act to have any retroactive effect, we believe that the "clock" for periods of continued silence triggering automatic expiration should not begin to run until the date of enactment, February 8, 1996. For stations that have been silent for substantial periods but which do not meet the automatic expiration requirement of 12 consecutive months of silence postdating enactment of the 1996 Act, we may continue to use existing revocation and cancellation procedures.

³ See, e.g., 47 C.F.R. §§ 73.561(d); 73.1740(a)(4); 74.763(b) and (c); and 74.1263(c) (notification by 10th day/consent if over 30 days); 73.761(b) and (c) (immediate notification/consent if over 10 days); and 73.1615 (immediate notification/consent if over 30 days).

⁴ For example, under prior procedures, the staff has authorized stations to remain off the air for periods exceeding 12-months, by issuing stations Special Temporary Authorizations (STAs) to remain silent for several successive periods. If pre-enactment silence were to trigger license expiration, a broadcaster with a currently valid STA to remain silent could find that its license had already expired despite that STA, with little, if any, prior notice, and without a meaningful opportunity for the licensee to prevent expiration by taking immediate action to return the station to the air.

1996 Act's Effect on the Silent Station's Other FCC Transactions

6. The 1996 Act is clear that the relevant period of the silence is that of the station. The period is not based on any particular licensee or facility. Accordingly, the assignment or transfer of a broadcast license, the modification of the licensed facilities, special temporary authorizations to remain silent (STAs), and other such transactions will not toll or extend the 12-month period, notwithstanding any provision in any authorization to the contrary. Neither can the Commission prevent the automatic expiration of the license by waiver. Therefore, parties seeking to assign a license or to modify the facilities of a silent station should make sure that sufficient time exists, before the automatic expiration of the license, to return the station to the air. With the expiration of a station's license, all associated authorizations related to that station necessarily would become null and void because there can be no such continued authority absent a valid station license.

Types of Stations Affected

7. The 1996 Act provides that the silent station provision of the Communications Act will apply to all "broadcasting stations." Upon examination of the definition of this term as well as closely connected terms defined in the Communications Act,⁵ we conclude that the silent station provision applies to the following stations licensed pursuant to Parts 73 and Part 74 of our rules: commercial and non-commercial AM, FM, and TV stations, International Broadcasting Stations, Low Power Television Stations, FM and TV Translator and Booster stations, broadcast experimental stations, and any other classes of broadcast stations that may be established in the future.⁶ See 47 C.F.R. Parts 73 and 74. The licenses for all such broadcasting stations will expire as a matter of law at the end of a twelve month consecutive period of silence. We also note that with the expiration of any AM, FM, or TV broadcasting station license, the licensee's associated remote pickup and auxiliary stations authorized in connection with the operation of the broadcasting station would also necessarily expire, notwithstanding any provision in the license of the remote pickup or auxiliary station to the contrary. Such stations are ancillary to the operation of the broadcast station, and the license terms of such stations are tied to those of the broadcast station.⁷

⁵ Among the defined Communications Act terms relevant to this determination are "broadcasting station," "broadcasting," "radio station," "radio communication" and "radio transmission of energy." 47 U.S.C. §§ 153(5), (6), (33), (35) and (49).

⁶ Although Instructional Fixed Television Service (ITFS) is included in Part 74, it is not included in this Order because ITFS is a point-to-point wireless service whose signals are intended for specific receive sites, and which are not associated with the operations of any broadcast station.

⁷ See 47 C.F.R. §§ 74.15(b), 74.401, 74.501, and 74.601.

Administrative Matters

8. We are revising these rules without providing prior public notice and an opportunity for comment because the rules being modified are mandated by the applicable provisions of the 1996 Act. We find that notice and comment procedures are unnecessary, and that this action therefore falls within the "good cause" exception of the Administrative Procedure Act ("APA").⁸ The rule changes adopted in this Order do not involve discretionary action on the part of the Commission. Rather, they simply codify provisions of the 1996 Act.

Ordering Clause

9. Accordingly, IT IS ORDERED that pursuant to Section 403(l) of the Telecommunications Act of 1996, codified as Section 312(g) of the Communications Act of 1934, as amended, 47 U.S.C. Section 312(g), Parts 73 and 74 of the Commission's Rules, 47 C.F.R. Part 73 and Part 74, ARE AMENDED as set forth in the Appendix. The rules will become effective upon publication of this Order in the Federal Register. We find good cause to make these rule changes effective less than 30 days after publication in the Federal Register.⁹ These changes merely modify the Commission's rules to conform with provisions of the 1996 Act that have already taken effect.

10. For additional information regarding this proceeding, contact Irene Bleiweiss, Mass Media Bureau, Audio Services Division, (202) 418-2780, or via the Internet at ibleiwei@fcc.gov. For additional information about stations that are currently silent, or for a list of such stations, please contact Karen Judge, Customer Service Team, (202) 418-2795, or via the Internet at kjudge@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

⁸ See 5 U.S.C. §553(b)(B) (notice requirements inapplicable "when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest").

⁹ See 5 U.S.C. § 553(d)(3).

APPENDIX

Rule Changes

Parts 73 and 74 of Title 47 of the Code of Federal Regulations are amended to read as follows:

PART 73 -- RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334.

2. Section 73.561 is amended by adding a last sentence to paragraph (d) to read as follows:

§ 73.561 Operating schedule; time sharing.

* * * * *

(d) * * * The license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

* * * * *

3. Section 73.733 is revised to read as follows:

§ 73.733 Normal license period.

All international broadcasting station licenses will be issued so as to expire at the hour of 3 a.m. local time and will be issued for a normal license period of 7 years expiring November 1. However, the license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

4. Section 73.761 is amended by adding a last sentence to paragraph (c) to read as follows:

§ 73.761 Time of operation.

* * * * *

(c) * * * The license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

5. Section 73.1020 is amended by adding a new paragraph (c) to read as follows:

§ 73.1020 Station license period.

* * * * *

(c) The license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

6. Section 73.1615 is amended by adding a new paragraph (c)(2) to read as follows:

§ 73.1615 Operation during modification of facilities.

* * * * *

(c) * * *

(2) The license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license or construction permit to the contrary.

* * * * *

7. Section 73.1635 is amended by adding a last sentence to paragraph (a)(4) to read as follows:

§ 73.1635 Special temporary authorizations (STA).

(a) * * *

(4) * * * The license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any STA or provision, term, or condition of the license to the contrary.

* * * * *

8. Section 73.1740 is amended by adding a new paragraph (c) to read as follows:

§ 73.1740 Minimum operating schedule.

* * * * *

(c) The license of any broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

9. Section 73.1750 is amended by adding a last sentence to read as follows:

§ 73.1750 Discontinuance of operation.

* * * The license of any broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

PART 74 -- EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

10. The authority citation for Part 74 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 554

11. Section 74.15 is amended by adding a new paragraph (g) to read as follows:

§ 74.15 Station license period.

* * * * *

(g) The license of an experimental broadcast station, FM translator or FM broadcast booster, TV translator or TV broadcast booster, or low power TV station will expire as a matter of law upon failure to transmit broadcast signals for any consecutive 12-month period notwithstanding any provision, term, or condition of the license to the contrary. Further, if the license of any AM, FM, or TV broadcasting station licensed under Part 73 expires for failure to transmit signals for any consecutive 12-month period, the licensee's authorizations under Part 74, subparts D, E, F, and H in connection with the operation of that AM, FM, or TV broadcasting station will also expire notwithstanding any provision, term, or condition to the contrary.

12. Section 74.112 is amended by revising paragraph (e) to read as follows:

§ 74.112 Supplementary statement with application for construction permit.

* * * * *

(e) That any authorization issued pursuant to the application may be cancelled at any time without notice or hearing, and will expire as a matter of law if the station fails to

transmit broadcast signals for any consecutive 12-month period, notwithstanding any provision, term, or condition of the license to the contrary.

* * * * *

13. Section 74.763 is amended by revising paragraph (c) to read as follows:

§ 74.763 Time of operation.

* * * * *

(c) Failure of a low power TV, TV translator, or TV booster station to operate for a period of 30 days or more, except for causes beyond the control of the licensee, shall be deemed evidence of discontinuation of operation and the license of the station may be cancelled at the discretion of the FCC. Furthermore, the station's license will expire as a matter of law, without regard to any causes beyond control of the licensee, if the station fails to transmit broadcast signals for any consecutive 12-month period, notwithstanding any provision, term, or condition of the license to the contrary.

* * * * *

14. Section 74.1263 is amended by revising paragraph (e) to read as follows:

§ 74.1263 Time of operation.

* * * * *

(e) Failure of an FM translator or booster station to operate for a period of 30 or more consecutive days, except for causes beyond the control of the licensee or authorized pursuant to paragraph(c) of this section, shall be deemed evidence of discontinuation of operation and the license of the station may be cancelled at the discretion of the Commission. Furthermore, the station's license will expire as a matter of law, without regard to any causes beyond control of the licensee or to any authorization pursuant to paragraph (c) of this section, if the station fails to transmit broadcast signals for any consecutive 12-month period, notwithstanding any provision, term, or condition of the license to the contrary.

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